

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST**

ORACLE AMERICA, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
THE UNITED STATES,)	
)	No. 18-1880C
Defendant,)	(Senior Judge Bruggink)
)	
and)	
)	
AMAZON WEB SERVICES, INC.,)	
)	
Defendant-Intervenor.)	

DEFENDANT’S RESPONSE TO THE COURT’S JUNE 3, 2019 ORDER

Defendant, the United States, respectfully responds to the Court’s June 3, 2019 order, directing us to respond to two questions regarding Anthony DeMartino.

I. Mr. DeMartino’s Participation In The JEDI Procurement After March 2018

The Court’s first question was whether “the amended administrative record reflect[s] any participation, substantive or otherwise, in the Joint Enterprise Defense Infrastructure [JEDI] Cloud procurement by Tony DeMartino after March 2018[.]” Dkt. No. 83. The answer is yes, the administrative record reflects that Mr. DeMartino participated in the JEDI procurement after March 2018 in a ministerial and perfunctory manner.

On April 2, 2018, in his role as Deputy Chief of Staff to the Secretary of Defense, *see* AR 5232, Mr. DeMartino suggested edits to a briefing paper prepared by the Defense Digital Service (DDS) for the Secretary of Defense. *Id.* at 4424-26. The purpose of his edits was to ensure that the briefing paper has “the specifics the [Secretary] is going to need.” *Id.* at 4426. Mr. DeMartino also forwarded his edits to Thomas Mooney, chief of staff for the Department of

Defense (DoD) Chief Management Officer, so that the offices of the Chief Management Officer and Cost Assessment & Program Evaluation could provide some of “depth and details” that the Secretary would need to know in the briefing. *Id.* at 4366-68.¹ Accordingly, Mr. DeMartino was effectively acting as a liaison between the Secretary of Defense and the JEDI team with regard to this briefing.

On April 4, 2018, Mr. Mooney e-mailed Mr. DeMartino and several others notifying them that DDS had briefed Congressional personnel that morning about something other than the JEDI procurement. *Id.* at 4348-49.

On April 12, 2018, Mr. DeMartino requested and received the final briefing paper for the meeting with the Secretary of Defense that was supposed to have occurred in early April, but apparently was cancelled. *See id.* at 4381-83.

On April 16, 2018, DDS counsel Sharon Woods copied Mr. DeMartino and 13 others on an e-mail to the Cloud Executive Steering Group announcing the release of the second draft solicitation. *Id.* at 4344.

On April 26, 2018, May 2, 2018, and June 5, 2018, Mr. DeMartino commented to others within DoD on media inquiries regarding the JEDI procurement. *See id.* at 4346-47, 4361-62, 4394-95.

II. Mr. DeMartino Resigned From DoD Effective July 6, 2018

The Court’s second question was whether “the amended administrative record reflect[s] whether Mr. DeMartino remains in government employment or, if not, provide information

¹ It appears that the meeting at which the briefing paper was going to be presented was cancelled. *See id.* at 4383.

regarding his departure from the Department of Defense[.]” Dkt. No. 83. The answer is yes, the administrative record reflects that Mr. DeMartino resigned from DoD effective July 6, 2018.

In her supplemental statement of fact to the Government Accountability Office, the contracting officer stated that Mr. DeMartino resigned from Federal employment in July 2018. *Id.* at 5232. An Executive Branch Personnel Public Financial Disclosure Report provides his “[d]ate of [t]ermination” as July 6, 2018. *Id.* at 23973.

There is documentation in the administrative record indicating that, in July 2018, Mr. DeMartino and DoD were preparing for Mr. DeMartino to be appointed as a Special Government Employee/consultant. *See id.* at 4331 (Mr. DeMartino’s consultant disqualification statement signed on July 10, 2018), 4343 (July 11, 2018 e-mail from attorney in the DoD Standards of Conduct Office to Mr. DeMartino, at his personal e-mail address, stating that “we are set from the ethics perspective with regard to your appointment as a consultant at the Department” and providing further guidance). However, there is no evidence in the record that Mr. DeMartino was ultimately appointed as a Special Government Employee/consultant. Rather, in a January 11, 2019 declaration that is in the Court’s record, a DoD human resources official states that Mr. DeMartino was not appointed as a Special Government Employee. Dkt. No. 47-1, pp. 9-10.

Respectfully submitted,

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